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MONTANA LEGISLATIVE HISTORY

Chapter 293 19 99

Bill H _____ S 314 Original bill & history ✓ C

H. Committee on STATE ADMIN.			S. Committee on NATURAL RESOURCES		
Hearing Date(s)	3/5	___ C	Hearing Date(s)	2/5	X C
+ EXEC. ACTION		___ C	EXEC. ACTION	2/12	___ C
		___ C			___ C
		___ C			___ C
Date Out		___ C			

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

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Senate BILL NO. 314

INTRODUCED BY [signature]
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE ENFORCEMENT OF THE ASBESTOS ABATEMENT LAWS; REVISING THE LAWS RELATING TO DENIAL, SUSPENSION, AND REVOCATION OF ACCREDITATION; AUTHORIZING INSPECTIONS; PROVIDING FOR CLEANUP ORDERS, ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES, AND INJUNCTIONS; AMENDING SECTIONS 75-2-508 AND 75-2-514, MCA; AND CONTINGENTLY REPEALING SECTION 75-2-514, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-2-508, MCA, is amended to read:

"**75-2-508. Asbestos control account.** (1) There is an asbestos control account in the state special revenue fund. There must be deposited in the account all money received from:

(a) fees collected under this part; and

(b) civil penalties collected pursuant to ~~75-2-514~~ [section 10 or 11] of [LC 989].

(2) Funds in the account are allocated to the department for the purpose of funding the costs of implementing and operating the asbestos control program established under this part."

Section 2. Section 75-2-508, MCA, is amended to read:

"**75-2-508. Asbestos control account.** (1) There is an asbestos control account in the state special revenue fund. There must be deposited in the account all money received from:

(a) fees collected under this part; and

(b) civil penalties collected pursuant to 75-2-514 and [section 4].

(2) Funds in the account are allocated to the department for the purpose of funding the costs of implementing and operating the asbestos control program established under this part."

Section 3. Section 75-2-514, MCA, is amended to read:

"**75-2-514. ~~Criminal and civil~~ Civil penalties -- disposition of civil penalties.** ~~(1) The department~~

~~may suspend, deny, or revoke the accreditation of or reprimand a person who:~~

~~(a) fraudulently or deceptively obtains or attempts to obtain accreditation;~~

~~(b) fails to meet the qualifications for accreditation or comply with the requirements of this part or any rule adopted by the department; or~~

~~(c) fails to meet any applicable federal or state standard for asbestos projects.~~

~~(2) Notwithstanding the provisions of any other law, a person who purposely or knowingly violates any provision of this part or an adopted rule or order issued pursuant to this part is guilty of a misdemeanor.~~

~~(3) If the department determines that a violation of this part or a rule promulgated pursuant to this part has occurred, it may issue an order compelling the person receiving the order to end the violation immediately.~~

~~(4) In addition to or instead of the remedies listed in subsections (1) through (3), an accredited person who purposely or knowingly violates this part or a rule adopted pursuant to this part that concerns the conduct of an asbestos project may be assessed a civil penalty by the district court of not more than $1,000 a day for an initial violation and $5,000 a day for each subsequent violation occurring within a 3-year period from the date of the initial violation.~~

~~(5)~~(1) A district court may assess a civil penalty of not more than $25,000 a day upon a person ~~who engages in an asbestos project without valid accreditation or a permit~~ that violates any provision of this part, a rule adopted under this part, or a permit or order issued under this part. In the case of a continuing violation, each day the violation continues constitutes a separate violation.

~~(6)~~(2) Civil penalties collected under this part must be deposited into the account established in 75-2-508.

(3) An action under this section is not a bar to enforcement by injunction or other appropriate civil or administrative remedies."

NEW SECTION. **Section 4. Administrative enforcement.** (1) The department may deny, suspend, or revoke the accreditation of a person that:

(a) fraudulently or deceptively obtains or attempts to obtain accreditation;

(b) fails to meet the qualifications for accreditation or fails to comply with the requirements of this part, a rule adopted under this part, or a permit or order issued under this part; or

(c) fails to meet an applicable federal or state standard for asbestos projects.

(2) When the department believes that a violation of this part, a rule adopted under this part, or a permit or order issued under this part has occurred, it may serve written notice of the violation personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this part or the rule, permit, or order alleged to be violated and the facts alleged to constitute a violation. The notice may include an order to take necessary corrective action within a reasonable period of time stated in the order, or an order to pay an administrative civil penalty, or both. An order becomes final unless, within 30 days after the order is received, the person that has been named requests, in writing, a hearing before the board.

(3) On receipt of a hearing request, the department shall schedule a hearing. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to any hearing conducted under this section. If, after a hearing, the department finds that a violation has not occurred or is not occurring, it shall rescind the order.

(4) (a) An action initiated under this section may include an administrative civil penalty of not more than $10,000 for each day of each violation, not to exceed a total of $80,000. Any order issued by the department under this section requiring payment of an administrative civil penalty must specify the basis for the penalty assessment.

(b) A penalty may not be assessed under this section for any day of violation that occurred more than 3 years prior to the department issuing the order requiring payment of the penalty.

(c) In determining the amount of a penalty assessed to a person under this section, the department shall consider:

(i) the seriousness of the violation;

(ii) the duration of the violation;

(iii) any economic benefit derived from the violation;

(iv) the person's good faith efforts to comply with the requirements in question;

(v) the person's compliance history;

(vi) the person's ability to pay a penalty; and

(vii) other matters as justice may require.

(d) Administrative civil penalties collected under this section must be deposited in the account established in 75-2-508.

(5) In addition to or instead of issuing an order under subsection (2), the department may:

(a) require the alleged violator to appear before the department for a hearing at a time and place specified in the notice of hearing to answer the charges complained of; or

(b) initiate action under 75-2-514.

NEW SECTION. **Section 5. Criminal penalties.** (1) A person convicted of purposely or knowingly violating any provision of this part, a rule adopted under this part, or a permit or order issued under this part is guilty of a misdemeanor.

(2) A prosecution under this section is not a bar to enforcement by injunction or other appropriate civil or administrative remedies.

NEW SECTION. **Section 6. Injunctions.** The department may institute and maintain in the name of the state, actions for injunctive relief, as provided in Title 27, chapter 19, to:

(1) immediately restrain a person from engaging in an unauthorized activity that is endangering or causing damage to public health or the environment;

(2) enjoin a violation of this part, a rule adopted under this part, an order issued under this part, or a permit issued under this part, without the necessity of prior revocation of the permit; or

(3) require compliance with this part, a rule adopted under this part, or a permit or order issued under this part.

NEW SECTION. **Section 7. Inspections -- sampling.** (1) (a) At any reasonable time and upon presentation of credentials, an employee or agent of the department may enter upon and inspect any place at which:

(i) an asbestos project is being conducted;

(ii) asbestos-containing material from an asbestos project is stored; or

(iii) records pertinent to an asbestos project are maintained.

(b) The employee or agent of the department may have access to and may copy any records relating to an asbestos project for the purpose of enforcing the provisions of this part, rules adopted under this part, or a permit or order issued under this part.

(2) During an inspection under this section, the employee or agent of the department may take

samples of any suspected asbestos-containing material, including samples from any vehicle in which asbestos-containing waste materials are transported. If the employee or agent of the department takes a sample of any suspected asbestos-containing material, prior to leaving the premises, the employee or agent shall give to the person in charge of the asbestos project a receipt describing the sample taken and, if requested, a portion of each sample equal in volume or weight to the portion retained. If an analysis is made of the samples, a copy of the results of the analysis must be furnished to the person in charge of the asbestos project.

NEW SECTION. **Section 8. Cleanup orders.** The department may issue a cleanup order to any person that has deposited asbestos-containing material or that has disturbed asbestos-containing material or that owns any property where the asbestos-containing material is located when the material poses an immediate threat to public health or the environment or is likely to pose a threat to public health or the environment in the immediate future. The order may direct the person to clean up and transport the asbestos-containing material to an authorized disposal facility, to treat the material so as to render it nonhazardous, or to take other necessary actions.

NEW SECTION. **Section 9. Repealer.** Section 75-2-514, MCA, is repealed.

NEW SECTION. **Section 10. Codification instruction.** [Sections 4 through 8] are intended to be codified as an integral part of Title 75, chapter 2, part 5, and the provisions of Title 75, chapter 2, part 5, apply to [sections 4 through 8].

NEW SECTION. **Section 11. Coordination instruction.** (1) If [LC 989] and [this act] are both passed and approved and if [LC 989] amends Title 75, chapter 2, part 5, then [sections 2 through 4 and 6 through 8 of this act] are void.

(2) If [this act] is passed and approved and [LC 989] is not passed and approved or if [this act] is passed and approved and [LC 989] is passed and approved but does not amend Title 75, chapter 2, part 5, then [sections 1 and 9] are void.

NEW SECTION. **Section 12. Saving clause.** [This act] does not affect rights and duties that

matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 13. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

- END -

Montana Legislative Branch

Montana Legislature

Detailed Bill Information

1999 **Session**

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

Bill Draft Number: LC0990 Current Bill Text
Bill Type - Number: SB 314
Short Title: Revise laws related to asbestos abatement
Primary Sponsor: Duane Grimes

Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 45

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/14/1999			
(S) Signed by Governor	04/12/1999			
(S) Transmitted to Governor	04/07/1999			
(H) Signed by Speaker	04/07/1999			
(C) Sent to Printing	04/01/1999			
(S) Signed by President	03/31/1999			
(S) Returned from Enrolling	03/31/1999			
(S) Sent to Enrolling	03/30/1999			
(H) Returned to Senate	03/30/1999			
(H) 3rd Reading Concurred	03/30/1999	91	8	
(H) Scheduled for 3rd Reading	03/30/1999			
(H) 2nd Reading Concurred	03/29/1999	87	10	
(H) Scheduled for 2nd Reading	03/29/1999			
(H) 2nd Reading Pass Consideration	03/13/1999			
(H) Scheduled for 2nd Reading	03/13/1999			
(H) Committee Report--Bill Concurred	03/06/1999			(H) State Administration
(H) Committee Executive Action--Bill Concurred	03/05/1999	13	4	(H) State Administration
(H) Hearing	03/05/1999			(H) State Administration

(H) Referred to Committee	02/20/1999			(H) State Administration
(H) First Reading	02/20/1999			
(S) Transmitted to House	02/18/1999			
(S) 3rd Reading Passed	02/18/1999	47	1	
(S) Scheduled for 3rd Reading	02/18/1999			
(S) 2nd Reading Passed	02/17/1999	50	0	
(S) Scheduled for 2nd Reading	02/17/1999			
(S) Committee Report--Bill Passed as Amended	02/15/1999			(S) Natural Resources
(S) Committee Executive Action--Bill Passed as Amended	02/15/1999	10	1	(S) Natural Resources
(S) Hearing	02/05/1999			(S) Natural Resources
(C) Introduced Bill Text Available Electronically	01/28/1999			
(S) Referred to Committee	01/28/1999			(S) Natural Resources
(S) First Reading	01/28/1999			
(S) Introduced	01/28/1999			
(C) Draft Delivered to Requester	01/27/1999			
(C) Draft Ready for Delivery	01/26/1999			
(C) Draft in Assembly/Executive Director Review	01/26/1999			
(C) Draft in Final Drafter Review	01/26/1999			
(C) Bill Draft Text Available Electronically	01/26/1999			
(C) Draft in Input/Proofing	01/26/1999			
(C) Draft To Drafter/Edit Review (SAM)	01/26/1999			
(C) Draft in Edit	01/25/1999			
(C) Draft in Legal Review	01/25/1999			
(C) Draft Back for Redo	01/25/1999			
(C) Draft in Legal Review	01/25/1999			
(C) Draft to Requester for Review	01/15/1999			
(C) Draft Request Received	12/04/1998			

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Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi
Requester	Ohs	Karl	

Drafter	Mitchell	Larry	
Primary Sponsor	Grimes	Duane	

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Subjects

Descriptio	Revenue/Approp.	Vote Majority Req.	Subject Code
Environmental Protection		Simple	ENVP
Health		Simple	HLTH

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

Additional Bill Information

Probable Fiscal Note: No
Preintroduction Required: N
Session Law Ch. Number: 293
DEADLINE
Category: General Bills
Transmittal Date: 02/24/1999
Return (with 2nd house amendments) Date: 04/01/1999

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Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections	01-OCT-99	

| Top | Actions | Sponsor, etc. | Subjects | Add'l Bill Info | Eff. Dates | New Search |

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MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **VICE CHAIRMAN DALE MAHLUM**, on February 5, 1999 at 3:25 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Mike Taylor (R)

Members Excused: Sen. Bill Wilson (D)

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Jyl Scheel, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 29, 2/5/1999; HB 35, 2/5/1999; SB 314, 2/5/1999
Executive Action: SB 249, 2/5/1999; HB 29, 2/5/1999; HB 35, 2/5/1999

HEARING ON HB 29

Sponsor: **REPRESENTATIVE KARL OHS, HD 33, HARRISON**

update on a contract with a private party. Other states in the Western United States that deal with large land masses, many of which have already gone through this updating process, suggested there are some very capable private firms that have much of the software already and are better positioned to do it than they would internally in state government. **SEN. TAYLOR** asked if they would be bringing the bid or proposal before Finance and Claims or through House Appropriations? **Mr. Clinch** responded yes, this year, one of their new proposals in their budget was this data base development. **SEN. TAYLOR** asked how much that was? **Mr. Clinch** responded it would be a loan through the Board of Investments and would be a $600,000 project over the course of seven years.

SENATOR COCCHIARELLA asked if they were subject to the MontFind payment and how much do they pay for that? **Mr. Clinch** answered yes but he was not sure the exact payment.

SENATOR TAYLOR stated he sat on the committee that funds MontFind and they are currently addressing those issues.

Closing by Sponsor:

REPRESENTATIVE CHRIS AHNER, SD 51, HELENA, stated they were going to utilize information from other states so they do not have to reinvent the wheel. As our state moves forward in this information age, they are hoping to utilize and create a level where they can be competitive and keep pace with the demands for state management of our lands. She encouraged a DO PASS recommendation.

{Tape : 1; Side : A; Approx. Time Counter : 12 - 18.5; Comments : None.}

HEARING ON SB 314

Sponsor: **SENATOR DUANE GRIMES, SD 20, CLANCY**

Proponents:

John Arrigo, Administrator, Department of Environmental Quality
Enforcement Division

Opponents: None.

Opening Statement by Sponsor:

SENATOR DUANE GRIMES, SD 20, CLANCY, presented **SB 314** which is an act revising laws related to asbestos abatement. The Asbestos Abatement Control Act enacted in 1989 created an accreditation program to certify persons involved in the related occupations and a permit system for the removal and disposal. The purpose of this bill is to clarify and expand the Department's enforcement authority for administrative penalties for violation of the act and he brings the bill at the request of the Department.

If a person violates the current laws the Department has the authority to issue an order to compel a person to end a violation but has no authority to order clean up or assess administrative penalties. The passage of this bill would make the civil penalty consistent and authorize the Department to issue administrative penalty orders and clean up orders to any person who violates the act.

Proponents' Testimony:

John Arrigo, Administrator, Department of Environmental Quality Enforcement Division, spoke in support of **SB 314** as per his written testimony **EXHIBIT(nas29a03).**

Opponents' Testimony: None.

{Tape : 1; Side : A; Approx. Time Counter : 18.5 - 24.2; Comments : None.}

Questions from Committee Members and Responses:

SENATOR COCCHIARELLA questioned in new Section 9 on page 5 is a repealer of Section 75-2-514, however, on page 1, Line 29 amends that Section. Is that correct? **Mr. Arrigo** admitted it is confusing. If SB 313 is passed then the repealer is void.

SENATOR MILLER wondered if there were examples of specific problems occurring that require the change? **Mr. Arrigo** stated an example is in the language of the existing law itself. Penalties are different for different types of people and the Department is authorized to take these people to court. Typically they end up in litigation and would prefer to have administrative penalty authority in order to have lower penalties and deal with these people on an administrative level.

SENATOR TAYLOR asked for an example of the court cases. **Mr. Simonich** stated he was not able to give a specific example of a case but would try to explain. In many of environmental statutes **DEQ** administers, the legislature has given them administrative enforcement authority so they can issue an administrative order

to stop an activity, clean up the activity and collect a penalty. This bill makes this authority fairly consistent with the authority they have in a number of the other environmental statutes so the Department can initialize steps administratively to get things cleaned up and then issue penalties.

SENATOR TAYLOR asked how did they arrive at the amount of $10,000 per day? **Mr. Simonich** stated that was a number in statute for some of the other penalties. A criminal penalty goes up to $25,000 per day under some statues. Generally they can not go above $10,000 per day on administrative penalties. **SEN. TAYLOR** stated under the new section it stated "any reasonable time" and asked for an explanation. **Mr. Simonich** said whatever a reasonable person would consider as reasonable. They are not going to show up in the dead of night. Generally if it is a business they would anticipate working with them during normal business hours.

SENATOR KEATING asked if this program was EPA driven? **Mr. Arrigo** responded there is a portion of the program, NESHAPS, which comes out of the Federal Clean Air Act. The Asbestos Control Act which is being amending here is unique to the State of Montana. **SEN. KEATING** asked if there were federal enforcements as well as state enforcements? **Mr. Arrigo** stated there was actually three types of asbestos enforcement authorities - state law, state clean air act with the NESHAPS requirement and a federal counterpart to that and then there are federal OSHA requirements which are mirrored under the state Department of Labor and Industry statutes. It is unlikely the state would take an action and EPA would take the duplicate action.

SENATOR KEATING asked if each of the enforcement authorities required a permit and had their own enforcement rules? **John Podolinsky, Coordinator of the Asbestos Control Program for DEQ,** responded there are three regulations that regulate contractors during abatement work - EPA, OSHA and the State of Montana. They are obligated to follow their regulations in the original permitting requirements. **SEN. KEATING** asked if a contractor messes up would he be subject to three separate fines for the same mistake or violation? **Mr. Podolinsky** stated it could be a possibility but not necessarily for the same particular violation. It could be one or two or none. **SEN. KEATING** stated there are two kinds of asbestos, one kind is dangerous and the other is not. Does EPA require that it all be cleaned up the same? **Mr. Podolinsky** responded yes. There is a misconception that all asbestos must be cleaned up. If the material is in good shape it can be left alone and left to do it's business in terms of insulating pipes or acting as floor tile or ceiling tile, etc.

A lot depends on how the material is defined and how it is categorized.

SENATOR GROSFIELD questioned page 3 line 19, how does that line relate to the effective date of this bill? Does it mean if this bill passes and the effective date is October 1, then on October 2 a penalty could be assessed going back three years from October 2? **Mr. Arrigo** said he thought the answer was yes. A non-legal interpretation is if we have this new administrative penalty authority on October 2 and we discover a violation that has occurred now we would go back and set penalties for that. **SEN. GROSFIELD** asked if that was not an ex post facto law creating a retroactive penalty? **Larry Mitchell** stated that it seems the way it was written makes an ex post facto law. It would be one that was not a violation at the time it occurred but this would make it retroactive the way it is written. **SEN. GROSFIELD** stated that is something that should be checked.

SENATOR GROSFIELD said he thought they had gotten all the penalties into the General Fund and on page 1, Line 18 and 19, he finds a penalty that is funding an agency. There are also new sections in this bill that penalties also go to the agency. Would you care to comment? **Mr. Simonich** stated they can't be blamed for trying. Last session there was an effort by one of the appropriations committee members to move penalties into the budget to try to fund the entire enforcement division. The Department objected to that and do not want to be in the position of being seen as bounty hunters collecting penalties just to keep the Department running. They would certainly not be adverse to those penalties going into the General Fund instead recognizing that would put them in a position where they would be asking the General Fund to fund the agency. **SEN. GROSFIELD** stated he appreciated the comment. He thought that was the way this would be interpreted which is one of the big reasons why the penalties are put into the General Fund in order to avoid that position.

SENATOR MAHLUM questioned if a store owner was removing some asbestos from their store over a period of seven days or more would that owner have a problem? **Mr. Simonich** stated to the best of his knowledge, no. This is targeted to those individuals who are licensed to remove.

{Tape : 1; Side : A; Approx. Time Counter : 24.2 - 44; Comments : Turned to Side B at this point.}

Closing by Sponsor:

SENATOR DUANE GRIMES, SD 20, CLANCY, stated the Department would have to go to court unless this bill is passed. This would allow for a quicker settlement and actually caps the penalty. He

encouraged a DO PASS recommendation and the Department be present for Executive Action to answer any questions.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 2.4; Comments : None.}

EXECUTIVE ACTION ON SB 249

Motion: **SEN. KEATING** moved that **SB 249 DO PASS.**

Discussion:

SENATOR GROSFIELD said he had a little problem with this bill. He agrees that the Resource Indemnity Trust Fund(RIT)has not been spent properly over the last 10+ years. He also agrees that it now should be spent on reclamation type activities. Two years ago there was a presentation in Environmental Quality Council regarding what was the original intention of **RIT.** Was the original intention to reach $100 million and then shut it off or not? In that discussion and in every discussion following on the issue there has never been a decisive answer. In the research he has done on this issue he has reached the conclusion that there was not an intention to eliminate the tax.

In 1972 after the Constitutional Convention, the Constitution was ratified by a vote of the people on June 6, 1972. In that ratification in Article 9, Section 2 there was a reclamation section. That reclamation section said "all lands disturbed by taking natural resources shall be reclaimed. The Legislature should provide effective requirements and standards for the reclamation of lands disturbed." The **RIT** part is not there and was not part of the 1972 Constitution. The 1973 legislature proposed a bill to create the Resource Indemnity Trust account which was created by an act adopted March 29, 1973. That has the same language, as in current law, that says only the interest will be spent until the fund reaches $100 million and thereafter it will be appropriated by the legislature. The important thing to note is that was adopted in 1973.

In 1974, the legislature adopted a referendum in Chapter 117. That was the **RIT** referendum which said the legislature shall provide for the fund and the principal shall remain forever inviolate at $100 million. The significance is that language was proposed in Chapter 117 for the purpose of trying to make sure that until $100 million was reached, the legislature did not rob the money. Eventually a small portion was robbed for the Groundwater Assessment Program. That was the purpose of going to

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 2-5-99
BILL NO. SB314

DEPARTMENT OF ENVIRONMENTAL QUALITY

MARC RACICOT, GOVERNOR

STATE OF MONTANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Testimony in support of SB314—AN ACT GENERALLY REVISING THE LAWS RELATING TO THE ENFORCEMENT OF THE ASBESTOS ABATEMENT LAWS

Senate Natural Resources Committee, February 5, 1999, 3:00 pm

Mr. Chairman and members of the committee my name is John Arrigo, administrator of the DEQ enforcement division. The purpose of SB314 is to clarify and expand the Department's enforcement authority under the Montana's Asbestos Control Act.

As Senator Grimes mentioned in his opening statement, civil penalties for violations of the act are inconsistent. Current law states that a person who purposely or knowingly violates the law is guilty of a misdemeanor. If a person purposely or knowingly violates the law, they may be assessed a civil penalty of up to $25,000 for each day of violation. An accredited person who violates the law may be assessed a $1,000 civil penalty for each day of violation and a $5,000 penalty for each subsequent violation The department believes that this authority is unclear and the penalty amounts are inconsistent. The department also believes that it is not always necessary to file a district court action to obtain compliance and assess penalties. The clean up order authority and administrative penalty authority provided by this bill would grant the department additional flexibility and discretion to take enforcement actions that are commensurate with the severity of the violation.

Having provided this background, I would like to describe the sections of the bill.

Sections 1 & 2. 75-2-508. Asbestos control account.
These sections amend internal references to conform with the New Sections (or SB313 if it passes).

Section 3. 75-2-514 Civil penalties — disposition of civil penalties.
This section deletes the enforcement language in the existing law. The civil penalty authority is broadened so that the court may assess a civil penalty of not more than $25,000 a day upon any person who violates the law. Criminal enforcement authority is deleted from this section, but is restored in New Section 5.

New Section 4. Administrative enforcement.
This New Section provides for denial, suspension or revocation of asbestos accreditation. It also provides administrative enforcement and penalty order authority for violations, with a maximum of $10,000/violation/day, not to exceed $80,000 total (same as 75-2-401 and SB313's New Section 10). This section lists the factors that must be considered when determining a penalty and establishes a procedure to appeal administrative penalty orders to the Board of Environmental Review.

Testimony by DEQ in support of SB314— continued
February 5, 1999

New Section 5. Criminal penalties.
This New Section restores the criminal authority that was removed in Section 3 and defines a violation which is purposely or knowingly committed as a misdemeanor.

New Section 6. Injunction.
This New Section clarifies the department's authority to file an action for injunctive relief as provided in Title 27, chapter 19.

New Section 7. Inspections — sampling.
This New Section clarifies that a department representative who presents appropriate credentials at a reasonable time may enter and inspect any place to examine an asbestos project or the storage of asbestos materials, to inspect and copy records and to collect samples.

New Section 8. Cleanup orders.
This New Section authorizes the department to issue cleanup orders if asbestos-containing material poses an immediate threat to public health or the environment or is likely to pose a threat in the immediate future. The order may specify that appropriate management or treatment actions be taken to correct an asbestos problem.

New Sections 9 & 11.
The Repealer in Section 9 and the Coordination provisions of Section 11 deal with the relationship between this bill and SB313. If SB314 and SB313 are both passed and approved and SB313 amends Title 75, chapter 2, part 5, then the enforcement authorities (injunctions, inspections, cleanup orders, etc.) will be duplicated and sections 2-4 and 6-8 of SB314 are void.

If SB314 passes and is approved and SB313 is not passed or approved, or if this bill is passed and approved and SB313 is passed and approved but does not amend Title 75, chapter 2, part 5, then sections 1 and 9 are void.

New Section 10. Codification instruction.

New Section 11 Saving clause.

The department will also propose some technical amendments in executive action. The bill proposes that appeals of administrative penalty orders go before the Board of Environmental Review. New Section 4(3) incorrectly refers to the department instead of the Board, and this should be corrected.

The department respectfully requests that the committee recommends passage of SB314, and I am available to answer any questions.

G:\ENF\LEGISL\TR\314TEST.WPD

MONTANA SENATE
1999 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE Feb 5, 1999

NAME	PRESENT	ABSENT	EXCUSED
SEN. BILL CRISMORE, CHAIRMAN	X		
SEN. DALE MAHLUM, VICE CHAIRMAN	X		
SEN. VICKI COCCHIARELLA	X		
SEN. MACK COLE	X		
SEN. LORENTS GROSFIELD	X		
SEN. TOM KEATING	X		
SEN. BEA MC CARTHY	X		
SEN. KEN MILLER	X		
SEN. GLENN ROUSH	X		
SEN. MIKE TAYLOR	X		
SEN. BILL WILSON			X

DATE 2-5-99

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: HB 29, HB 35, SB 314

Exec Action: SB 249, HB 29, HB 35

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
[illegible]		DNRC	HB29	✓	
John Arrigo		DEQ	SB314	✓	
John Podolinsky		DEQ	SB 314		
Ralph Peck		MT Dept of Ag	HB 29	✓	
Ray Beck		DNRC	HB 29	✓	
Bud Clinch		DNRC	HB-35	✓	
Mike Murphy		MT. Water Res. Assn.	HB29	✓	
Mike Volesky		MT Assoc. of Conn. Dist's	HB 29	✓	
Mark Simonich		DEQ	SB 314	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on February 12, 1999 at 3:00 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Mike Taylor (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Jyl Scheel, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 371, 2/12/1999; SB 313, 2/12/1999
Executive Action: SB 235; SB 314; SB 316; SB 362; SB 371

HEARING ON SB 371

Sponsor: **SENATOR KEN MESAROS, SD 25, CASCADE**

Motion: **SEN. KEATING** moved that **SB 235 DO PASS.**

Motion: **SEN. GROSFIELD** moved that **SB 235 AMENDMENTS SB023501.ALM DO PASS. EXHIBIT(nas35a03).**

Discussion:

SENATOR GROSFIELD stated he wanted it clear in the statute that this was a special deal with regard to exception from abandonment and he did not want to have an open door for other people to come in and say they want out of abandonment too. The Whereas' set this out as a special situation dealing with A-closed drainages and diligence is tightened up so the committee would not be sorry this was opened up in the future. He appreciated working with **Mr. Crowley** on these amendments.

Vote: Motion that **SB 235 AMENDMENTS SB023501.ALM DO PASS carried 9-0.**

Motion/Vote: **SEN. GROSFIELD** moved that **SB 235 DO PASS AS AMENDED. Motion carried 10-1 with SENATOR TAYLOR voting no.**

EXECUTIVE ACTION ON SB 314

Motion: **SEN. MCCARTHY** moved **SB 314 DO PASS.**

Motion: **SEN. GROSFIELD** moved that **SB 314 AMENDMENTS SB031401.ALM DO PASS. EXHIBIT(nas35a04).**

Vote: Motion that **SB 314 AMENDMENTS SB031401.ALM DO PASS carried 9-0.**

Motion/Vote: **SEN. MCCARTHY** moved that **SB 314 DO PASS AS AMENDED. Motion carried 10-1 with SENATOR MILLER voting no.**

EXECUTIVE ACTION ON SB 316

Motion/Vote: **SEN. KEATING** moved that **SB 316 BE TABLED. Motion carried 9-0.**

EXECUTIVE ACTION ON SB 362

Motion: **SEN. KEATING** moved that **SB 362 DO PASS.**

SENATE NATURAL RESOURCES
EXHIBIT NO. 4
DATE 2-12-99
BILL NO. SB 314

Amendments to Senate Bill No. 314
1st Reading Copy

For the Senate Natural Resources Committee

Prepared by Larry Mitchell
February 8, 1999

1. Page 1, line 15
Strike: ":"

2. Page 1, line 16.
Strike: "(a)"
Strike: "; and"
Insert: "."

3. Page 1, line 17.
Strike: line 17 in its entirety

4. Page 1, line 21 through line 27.
Strike: section 2 in its entirety
Renumber: subsequent sections

5. Page 2.
Following: line 20
Strike: subsection 2 in its entirety
Renumber: subsequent subsection

6. Page 3, line 10.
Following: "the"
Strike: "department"
Insert: "board"

7. Page 3, line 12.
Following: "the "
Strike: "department"
Insert: "board"

8. Page 3.
Following: line 28
Strike: lines 29 and 30 in their entirety

9. Page 4, line 2.

Following: "before the"
Strike: "department"
Insert: "board"

10. Page 5, line 19.
Following: "[Sections"
Strike: "4 through 8"
Insert: "3 through 7"

11. Page 5, line 21.
Following: "[sections"
Strike: "4 through 8"
Insert: "3 through 7"

12. Page 5, line 23.
Following: "If"
Strike: "[LC 989]"
Insert: "Senate Bill No. 313"

13. Page 5, line 24 through line 25.
Following: "if"
Strike: "[LC 989]"
Insert: "Senate Bill No. 313"
Following: "sections 2" on line 24
Strike: the remainder of line 24 through "8" on line 25
Insert: ", 3, and 5 through 7"

14. Page 5, line 26.
Strike: "[LC 989]"
Insert: "Senate Bill No. 313"

15. Page 5, line 27.
Strike: "[LC 989]"
Insert: "Senate Bill No. 313"

16. Page 5, line 28.
Following: "then"
Strike: "[sections 1 and 9] are"
Insert: "[section 8] is"

- END -

MONTANA SENATE
1999 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE 2-12-99

NAME	PRESENT	ABSENT	EXCUSED
SEN. BILL CRISMORE, CHAIRMAN	X		
SEN. DALE MAHLUM, VICE CHAIRMAN	X		
SEN. VICKI COCCHIARELLA	X		
SEN. MACK COLE	X		
SEN. LORENTS GROSFIELD	X		
SEN. TOM KEATING	X		
SEN. BEA MC CARTHY	X		
SEN. KEN MILLER	X		
SEN. GLENN ROUSH	X		
SEN. MIKE TAYLOR	X		
SEN. BILL WILSON	X		

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Natural Resources** report that **Senate Bill 314** (first reading copy -- white) **do pass as amended**.

Signed: _____
Senator William Crismore, Chair

And, that such amendments read:

1. Page 1, line 15
Strike: ":"

2. Page 1, line 16.
Strike: "(a)"
Strike: "; and"
Insert: "."

3. Page 1, line 17.
Strike: line 17 in its entirety

4. Page 1, line 21 through line 27.
Strike: section 2 in its entirety
Renumber: subsequent sections

5. Page 2.
Following: line 20
Strike: subsection 2 in its entirety
Renumber: subsequent subsection

6. Page 3, line 10.
Following: "the"
Strike: "department"
Insert: "board"

7. Page 3, line 12.
Following: "the "
Strike: "department"

Committee Vote:
Yes 10, No 1.

370813SC.sjo

Insert: "board"

8. Page 3.
Following: line 28
Strike: lines 29 and 30 in their entirety

9. Page 4, line 2.
Following: "before the"
Strike: "department"
Insert: "board"

10. Page 5, line 19.
Following: "[Sections"
Strike: "4 through 8"
Insert: "3 through 7"

11. Page 5, line 21.
Following: "[sections"
Strike: "4 through 8"
Insert: "3 through 7"

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Following: "If"
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Insert: "Senate Bill No. 313"

15. Page 5, line 27.
Strike: "[LC 989]"
Insert: "Senate Bill No. 313"

16. Page 5, line 28.
Following: "then"
Strike: "[sections 1 and 9] are"
Insert: "[section 8] is"

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN MATT BRAINARD**, on March 5, 1999 at 8:00 A.M., in Room 420 Capitol.

ROLL CALL

Members Present:

Rep. Matt Brainard, Chairman (R)
Rep. Toni Hagener, Vice Chairman (D)
Rep. Allan Walters, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Joan Andersen (R)
Rep. Edith Clark (R)
Rep. Tom Dell (D)
Rep. George Golie (D)
Rep. Donald L. Hedges (R)
Rep. Monica Lindeen (D)
Rep. Jeff Mangan (D)
Rep. Douglas Mood (R)
Rep. Brennan Ryan (D)
Rep. Frank Smith (D)
Rep. Bill Tash (R)
Rep. Bill Thomas (R)
Rep. Doug Wagner (R)

Members Excused: None.

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Branch
Karen Mills, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s): SB 295, 314, 317, 325, 4/3/1999
Executive Action: SB 314, 325, 317
Posted: SB 295, 317, 325-- 2/19/99
SB 314-- 2/20/99

HEARING ON SB 295

Opening Statement by Sponsor: SEN. STEVE DOHERTY
{Tape : 1; Side : A; Approx. Time Counter : 0.2 - 1.8}

Proponents' Testimony:

TIM SHANK, Mt. Police Protective Assoc. EXHIBIT(sth50a01)
{Tape : 1; Side : A; Approx. Time Counter : 2.2 - 3.6}

PAT CLINCH, Mt, State Counsel of Firefighters
{Tape : 1; Side : A; Approx. Time Counter : 4.1 - 4.6}

TOM BILODEAU, MEA/MFT
{Tape : 1; Side : A; Approx. Time Counter : 5.7 - 5.9}

BOB ANDERSON, Mt. Sheriff's Assoc.
{Tape : 1; Side : A; Approx. Time Counter : 5.7 - 5.9}

JIM OBERHOFEN, Ret. Chief of Police, Missoula
{Tape : 1; Side : A; Approx. Time Counter : 5.9 - 7}

MIKE O'CONNOR, PERS
{Tape : 1; Side : A; Approx. Time Counter : 7.2 - 7.8}

TROY MCGEE, Chief of Police, Helena
{Tape : 1; Side : A; Approx. Time Counter : 8.1 - 8.4}

JEFF BRYSON, Retired Helena Policeman
{Tape : 1; Side : A; Approx. Time Counter : 8.4 - 9.2}

KEVIN CLADER, Retired Policeman, Missoula
{Tape : 1; Side : A; Approx. Time Counter : 9.3 - 9.6}

Questions from Committee Members and Responses:

REPS; WALTERS, MOOD, BRAINARD AND MOOD
{Tape : 1; Side : A; Approx. Time Counter : 9.9 - 15.7}

Closing by Sponsor: REP. STEVE DOHERTY
{Tape : 1; Side : A; Approx. Time Counter : 15.8 - 17.1}

HEARING ON SB 314

Opening Statement by Sponsor: SEN. WAYNE GRIMES
{Tape : 1; Side : A; Approx. Time Counter : 19.4 - 20.8}

Proponents' Testimony:

JOHN ARRIGO, DEQ Chairman of Quality Enforcement Div.
{Tape : 1; Side : A; Approx. Time Counter : 20.9 - 27.6}

Questions from Committee Members and Responses:

REPS; TASH, WAGNER, HEDGES, MOOD, WAGNER, ADAMS, TASH, ANDERSEN, MANGAN, THOMAS, BRAINARD AND WAGNER.
{Tape : 1; Side : A; Approx. Time Counter : 28.1 - 30.1}
{Tape : 1; Side : B; Approx. Time Counter : 0.1 - 19.6}

Closing by Sponsor: SEN. DUANE GRIMES
{Tape : 1; Side : B; Approx. Time Counter : 19.7 - 21.2}

HEARING ON SB 317

Opening Statement by Sponsor: SEN. TOM BECK
{Tape : 1; Side : B; Approx. Time Counter : 21.6 - 23.1}

Proponents' Testimony:

KEITH COLBO, Chief Ex. Mt. Ind. Bankers.
{Tape : 1; Side : B; Approx. Time Counter : 23.2 - 24.1}

JIM MOCHIZUKI, Federal Home Loan Bank of Seattle
{Tape : 1; Side : B; Approx. Time Counter : 24.2 - 30.1}

Questions from Committee Members and Responses:

REPS; SMITH, BRAINARD, HEDGES AND HAGENER
{Tape : 2; Side : A; Approx. Time Counter : 0.1 - 12.1}

Closing by Sponsor: SEN. TOM BECK
{Tape : 2; Side : A; Approx. Time Counter : 12.3 - 12.8}

EXECUTIVE ACTION ON SB 314

Motion: REP. MANGAN moved DO CONCUR on SB 314.
{Tape : 2; Side : A; Approx. Time Counter : 13.5 - 13.6}

Questions from Committee Members and Responses:

REPS; TASH, HEDGES, WAGNER, BRAINARD, TASH, BRAINARD, THOMAS, WAGNER, TASH, GOLIE, MANGAN, HAGENER, MOOD HEDGES AND DELL.
{Tape : 2; Side : A; Approx. Time Counter : 13.7 - 23.9}

Vote: The motion carried 13-4; REPS; ANDERSEN, WAGNER, GOLIE ADAMS voting no.
{Tape : 2; Side : A; Approx. Time Counter : 24.9 - 25.1}

REP. TASH WILL CARRY SB 314 TO THE HOUSE FLOOR.

HEARING ON SB 325

Opening Statement by Sponsor: **SEN. JOHN HERTEL**
{Tape : 2; Side : A; Approx. Time Counter : 25.2 - 28.9}

Proponents' Testimony:

LINDA BRANNON, Mt. Assoc. of School Officials
{Tape : 2; Side : A; Approx. Time Counter : 29.1 - 30.1}

Questions from Committee Members and Responses:

REPS; HEDGES, ANDERSEN, ADAMS, HAGENER AND BRAINARD
{Tape : 2; Side : B; Approx. Time Counter : 2.5 - 10.5}

Closing by Sponsor: **SEN. JOHN HERTEL**
{Tape : 2; Side : B; Approx. Time Counter : 10.5 - 12.2}

EXECUTIVE ACTION ON SB 317

Motion: **REP. HEDGES moved DO CONCUR on SB 317.**
{Tape : 2; Side : B; Approx. Time Counter : 13 - 13.1}

Discussion:

REPS; HAGENER, ADAMS, WALTERS, TASH, ADAMS, HEDGES, ANDERSEN, WALTERS AND SMITH.
{Tape : 2; Side : B; Approx. Time Counter : 13.1 - 18}

Vote: The motion carried 15-2; REPS; ADAMS AND HAGENER VOTING NO.
{Tape : 2; Side : B; Approx. Time Counter : 18 - 19.2}

REP. WALTERS WILL CARRY SB 317 TO THE HOUSE FLOOR.

EXECUTIVE ACTION ON SB 325

Motion: **REP. HAGENER moved DO CONCUR on SB 325.**

HOUSE OF REPRESENTATIVE
ROLL CALL

STATE ADMINISTRATION COMMITTEE

DATE March 5, 1999

	NAME	PRESENT	ABSENT	EXCUSED
Rep	Allan Walters	✓		
Rep	Don Hedges	✓		
Rep	Frank Smith	✓		
Rep	Darrel Adams	✓		
Rep	Joan Andersen	✓		
Rep	Tom Dell	✓		
Rep	Bill Tash	✓		
Rep	Jeff Mangan	✓		
Rep	Doug Mood	✓		
Rep	Brennan Ryan	✓		
Rep	George Golie	✓		
Rep	Doug Wagner	✓		
Rep	~~Edith Clark~~	✓		
Rep	~~Monica Lindeen~~	✓		
Rep	~~Bill Thomas~~	✓		
Rep	~~Toni Hagener~~	✓		
Rep	Matt Brainard	✓		
	Sheri Heffelfinger			

HOUSE STANDING COMMITTEE REPORT

March 5, 1999

Mr. Speaker:

We, your committee on **State Administration** report that **Senate Bill 314** (third reading copy -- blue) **be concurred in.**

Signed: Brainard
Representative Matt Brainard, Chair

To be carried by Representative Bill Tash

- END -

Committee Vote:
Yes 13, No 4.

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SB 3:10
2:35
3-5

COMMITTEE PROXY

Date 3/4/99

I request to be excused from the Hob Gibson Committee meeting this date because of other commitments. I desire to leave my proxy vote with Tom Hagedorn.

Indicate **Bill Number** and your vote **Aye** or **No**. If there are **amendments**, list them by **name and number** under the bill and indicate a **separate vote for each amendment**.

HOUSE BILL/AMENDMENT	AYE	NO
S B - 314	✓	
S B - 317	✓	
S B - 325 amend.	✓	
	✓	

SENATE BILL/AMENDMENT	AYE	NO

Rep. Monica A. Jordan
(Signature)

HR:1991
wp/proxy

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 3/5/99

BILL NO. SB 314 SPONSOR(S) GRIMES

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
(P) O I	JOHN ARRIGO	Helena	DEQ
(P) O I	MARK Simonich	Helena	DEQ
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.